

APPEAL NO. 041244
FILED JULY 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 12, 2003. That hearing was continued to and held on October 7, 2003. Clarification was sought of a medical opinion and due to "difficulties in the procurement of that clarification," the record was not closed until April 19, 2004. With respect to the issues before her, the hearing officer determined that the respondent's (claimant) compensable injury of _____, extends to and includes the current disc pathology at L3-4 and L5-S1, and that the appellant (carrier) waived its right to contest compensability of the claimed injury at L3-4 but did not waive its right to contest compensability of the claimed injury at L5-S1. In its appeal, the carrier asserts error in each of those determinations and, additionally, contends that the hearing officer was not impartial. In his response to the carrier's appeal, the claimant urges affirmance.

DECISION

Reversed and remanded.

Section 410.203(a)(1) requires the Appeals Panel to consider the record developed at the hearing. See Texas Workers' Compensation Commission Appeal No. 93809, decided October 25, 1993. Unfortunately, neither the audiotape recordings of the May 12, 2003, hearing or the October 7, 2003, hearing are audible. The record contains a letter dated October 21, 2003, in which the hearing officer advises the parties that the tape of the October 7, 2003, was "inaudible and defective" and purporting to include a reconstruction of the record from the hearing officer's notes. In that letter, the hearing officer also asked the parties to supplement any information that they believed was missing from the reconstruction of the record by November 10, 2003. The hearing officer's reconstruction of the record is not included in the documents forwarded to the Appeals Panel for review. In addition, we note that in the claimant's response to the carrier's appeal, the assertion is made that the carrier responded to the hearing officer's reconstruction of the record. However, such a response is likewise not included in the appeal record. Finally, we note that the record was held open to seek clarification of a July 10, 2003, letter from Dr. T. In a letter dated February 18, 2004, the hearing officer advised the parties that Dr. T had not responded and further advised them that the field office manager was issuing an Order to Compel a response. That order is similarly dated February 18, 2004, and requires a response by March 3, 2004. Although it is not entirely clear, it appears that Dr. T did not respond to the letter of clarification even after the Order to Compel was issued. If however, he did respond, that response is also not included in the record on appeal. Accordingly, we remand this case for reconstruction of the record. The reconstruction must include the substance of the hearings of both May 12, 2003, and October 7, 2003. In addition, the response, if any, of Dr. T to the November 19, 2003, letter of clarification should be included in the record. See Texas Workers' Compensation Commission Appeal No. 960968, decided July 3, 1996. Due to

the lack of significant portions of the record, as noted above, we are unable to meaningfully review the carrier's contention that the hearing officer lost her impartiality and was biased against the carrier at this time.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **ZENITH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES H. MOODY II
901 MAIN STREET
DALLAS, TEXAS 75202.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Thomas A. Knapp
Appeals Judge